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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WORCHESTER DIVISON**

GABRIELLE HARRIS,
Plaintiff

vs.

DANIELS LAW OFFICES, PC,
And
OSI FUNDING CORPORATION,
Defendant

Civil Action No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

COMPLAINT

NOW COMES the Plaintiff, GABRIELLE HARRIS, by and through her attorneys, KIMMEL & SILVERMAN, PC, for her complaint against the Defendants, DANIELS LAW OFFICES, PC and OSI FUNDING CORPORATION, Plaintiff states as follows:

I. JURISDICTION & VENUE

1. This is an action for damages brought by an individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate

1 United States District Court without regard to the amount in controversy,” and 28
2 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
3 under the laws of the United States.
4

5 3. Defendants conduct business within the Commonwealth of
6 Massachusetts and therefore, personal jurisdiction is established.

7 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1).

8 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
9 2202.
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12 **II. PARTIES**

13 6. GABRIELLE HARRIS, (hereinafter, “Plaintiff”) is an individual who
14 was at all relevant times a resident of Shrewsbury, Massachusetts.
15

16 7. DANIELS LAW OFFICES, PC (hereinafter, “DANIELS”) is a
17 corporation engaged in the collection of debts and incorporated in the
18 Commonwealth of Massachusetts with a business address located at 1250 Hancock
19 Street, Suite 600N, P.O. Box 699241, Quincy MA 02269-9241.
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2 8. OSI FUNDING CORPORATION, (hereinafter, "OSI") is a business
3
4 entity engaged in the collection of debts and incorporated in the State of Missouri
5 with a business address located at 390 S. Woods Mill Road, Suite 350, Chesterfield,
6 MO 63017-3668.

7
8 9. At all relevant times, Plaintiff is a "consumer" as that term is defined
9 by 15 U.S.C. §1692a(3).

10 10. At all relevant times, Defendant DANIELS acted as a debt collector
11 as that term is defined by 15 U.S.C. §1692a(6), in that it held itself out to be a
12 company collecting a consumer debt allegedly owed by Plaintiff to Defendant.
13

14 11. DANIELS is not a licensed debt collector within the Commonwealth
15 of Massachusetts to collect debts for third parties as required by M.G.L. CH. 93
16 §24-28. (*See Plaintiff's Exhibit A*).

17 12. Despite not being authorized to collect debts within the
18 Commonwealth of Massachusetts, Defendant DANIELS, sought to collect a debt
19 allegedly owed by Plaintiff.
20

21 13. At all relevant times, Defendant OSI acted as a debt collector as that
22 term is defined by 15 U.S.C. §1692a(6), in that it held itself out to be a company
23 collecting a consumer debt allegedly owed by Plaintiff to Defendant.
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1 14. OSI is not a licensed debt collector within the Commonwealth of
2 Massachusetts to collect debts for third parties as required by M.G.L. CH. 93 §24-
3 28. (*See Plaintiff's Exhibit A*).
4

5 15. Despite not being authorized to collect debts within the
6 Commonwealth of Massachusetts, Defendant OSI, held itself out as being a
7 company collecting a debt allegedly owed by Plaintiff.
8

9 16. Both Defendants worked in concert with one another to collect a debt
10 allegedly owed by Plaintiff.
11

12 **III. PRELIMINARY STATEMENT**

13

14 17. The Fair Debt Collection Practices Act ("FDCPA") is a
15 comprehensive statute which prohibits a catalog of activities in connection with the
16 collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
17 imposes civil liability on any person or entity that violates its provisions, and
18 establishes general standards of debt collector conduct, defines abuse, and provides
19 for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
20 FDCPA declare certain rights to be provided to or claimed by debtors, forbid
21 deceitful and misleading practices, prohibit harassing and abusive tactics, and
22 proscribe unfair or unconscionable conduct, both generally and in a specific list of
23 disapproved practices.
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1 18. In particular, the FDCPA broadly enumerates several practices
2 considered contrary to its stated purpose, and forbids debt collectors from taking
3 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
4 First, a “debt collector may not engage in any conduct the natural consequence of
5 which is to harass, oppress, or abuse any person in connection with the collection
6 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
7 deceptive, or misleading representation or means in connection with the collection
8 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
9 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
10 1692f. The FDCPA is designed to protect consumers from unscrupulous
11 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
12 unconscionable collection methods, conduct which harasses, oppresses or abuses
13 any debtor, and any false, deceptive or misleading statements in connection with
14 the collection of a debt.
15

16 19. In enacting the FDCPA, the United States Congress found that
17 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
18 collection practices by many debt collectors,” which “contribute to the number of
19 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
20 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
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1 20. "Shiloh Hayfield" contacted Plaintiff two (2) to three (3) times a day
2 at his place of employment. Plaintiff currently serves in the United States Marine
3 Corps and is stationed as a Recruiter at the Recruiting Office in Plymouth, MA.
4

5 21. Defendant knew Plaintiff was not allowed to accept calls at his place
6 of employment but continued to contact him anyway, in attempt to harass,
7 embarrass and cause damage to Plaintiff.
8

9 22. "Shiloh Hayfield" raised her voice and threatened "to call [Plaintiff's]
10 Commanding Officer if the debt [was not] paid" and to make derogatory
11 statements.
12

13 23. "Shiloh Hayfield" told Plaintiff that he would "get kicked out of the
14 Marine Corps" and "be put into the Brig (prison) if [he failed to pay the alleged
15 debt]."
16

17 24. Defendant told Plaintiff that he could be sued and his wages garnished
18 if he did not pay the alleged debt.

19 25. Plaintiff told Defendant to stop contacting him; however, Defendant
20 ignored Plaintiff's instructions and continued to contact him.
21

22 26. At all times Plaintiff has disputed owing the debt.

23 27. On at least one occasion, Defendant used false, misleading and
24 deceptive means in connection with the collection of an alleged debt.

25 28. Defendant continues to attempt to collect on the alleged debt.

1 25. Plaintiff relocated from Gardner to her current address in Shrewsbury,
2 Massachusetts and has maintained that address since that time. The post office
3 was appraised of this change and all mail directed to her prior address had been
4 appropriately routed to her new address, without incident. Plaintiff has and
5 continues to receive mail at the Shrewsbury address.
6

7 26. Plaintiff was first contacted by Defendant DANIELS and OSI, upon
8 receiving a document titled "Supplementary Process Summons" in February, 2010.
9 The document and communications from Defendants represented that a judgment
10 had been secured in 2002. The document includes a court docket number and is
11 listed as being filed with "Trial Court of the Commonwealth Court District Court
12 Department Westborough Division" (*See Plaintiff's Exhibit B*).
13
14

15 27. The statute of limitation for collection of an open account is 6 years.
16 *See M.G. L. Title V, Ch. 260 §2.*
17

18 28. The statute of limitations for this alleged debt, regardless of its
19 merits, has long since expired.

20 29.. On March 26, 2010, counsel for Plaintiff investigated directly with the
21 Gardner District Court and the Westborough District Court and learned that there
22 is no docket of any claim against Plaintiff from 2002 (or otherwise), nor any
23 judgment against her either.
24
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1 30. On March 26, 2010, Plaintiff's attorney contacted Defendant
2 DANIELS with the intent to obtain a copy of the alleged judgment from 2002, but
3 Defendant DANIELS Law Office personnel were uncooperative in the extreme,
4 and refused to put through the call to an attorney.
5

6 31. Plaintiff's counsel had the call directed to a "collection agent" at
7 which time again requested to speak with Attorney Richard Daniels in relation to
8 the summons. The "collection agent" stated that "Attorney Daniels does not take
9 any incoming calls and there is no other attorney at that office to speak with". The
10 undersigned asked the "collection agent" to provide copies of all court documents
11 and any non-related court documents, specifically proof of service of the original
12 judgment back in 2002 but was told that she "did not have such documentation as
13 the case was too old to be in her computer system but usually proof of service is
14 left at the last & usual [sic]."
15

16 32. Upon information and belief, Defendants OSI and DANIELS filed
17 and served *Exhibit B* knowing that the statute of limitations had expired, claiming a
18 non-existent 2002 judgment for a complaint it never served upon Plaintiff.
19

20 33. Upon information and belief, Defendants acted in concert, filing and
21 serving *Exhibit B* to falsely represent a judgment had been taken in 2002 and to
22 extract a settlement of the claim from Plaintiff in 2010. Defendants had no
23 justification in fact or law to support such conduct.
24
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CONSTRUCTION OF APPLICABLE LAW

34. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

35. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C § 1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

36. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3d Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA

1 was not “made for the protection of experts, but for the public - that vast multitude
2 which includes the ignorant, the unthinking, and the credulous, and the fact that a
3 false statement may be obviously false to those who are trained and experienced
4 does not change its character, nor take away its power to deceive others less
5 experienced.” *Id.* The least sophisticated consumer standard serves a dual purpose
6 in that it ensures protection of all consumers, even naive and trusting, against
7 deceptive collection practices, and protects collectors against liability for bizarre or
8 idiosyncratic interpretations of collection notices. *Clomon*, 988 F. 2d at 1318.
9

COUNT I

12
13 *(Violation of the Unfair, Deceptive or Unreasonable Debt Collection Procedures,*
14 *M.G.L. Ch. 93 §24-28 against both Defendants)*

15 37. Defendants acted as unauthorized debt collectors within the confines
16 of the Commonwealth of Massachusetts, in their attempt to collect an alleged debt,
17 have engaged in unfair, deceptive and unreasonable debt collection practices,
18 within the meaning of M.G.L. ch. 93 § 24-28.
19

20 38. These actions include, but are not limited to, using unfair and
21 unconscionable means to collect or attempt to collect a debt by an unlicensed debt
22 collector within the Commonwealth of Massachusetts. *(See Exhibit A)*.
23

24 39. Defendants acted as unauthorized debt collectors within the confines
25 of the Commonwealth of Massachusetts, fail to meet the requirements of the

1 Commonwealth's Debt Collection Laws and the Federal Trade Commission, are
2 not licensed as a "debt collector" within the Commonwealth, as required by law.
3
4 (*See Exhibit C*).

5 40. Defendants are unauthorized to file a lawsuit within the
6 Commonwealth of Massachusetts, to attempt to collect an alleged debt if not
7 licensed as a "debt collector" within the Commonwealth and such action must be
8 dismissed as a matter of law with prejudice. (*See Exhibit B*).

9
10 41. Plaintiff has incurred damage as a result of Defendants' violations of
11 M.G.L. ch. 93 § 24-28.

12
13 **COUNT II**

14 (*Violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. against*
15 *both Defendants*)

16 42. In its attempts to collect the debt allegedly owed by Plaintiff,
17 Defendants, DANIELS and OSI, violated the FDCPA, 15 U.S.C. §1692 et seq., in
18 one or more of the following ways:
19

20 a. Defendants violated the FDCPA §1692e, when it used false,
21 misleading and deceptive means in connection with the collection of
22 an alleged debt;

23 b. Defendant violated the FDCPA §1692e(2), when it falsely
24 represented the character, amount or legal status of the alleged debt;
25

1 c. Defendant violated the FDCPA § 1692e(4), when it represented
2 or implicated that nonpayment of any debt will result in the arrest or
3 imprisonment of any person or the seizure, garnishment, attachment,
4 or sale of any property or wages of any person unless such action is
5 lawful and the debt collector or creditor intends to take such action in;
6

7 d. Defendant violated the FDCPA § 1692e (5), when it threatened
8 to take any action that cannot legally be taken;
9

10 e. Defendant violated the FDCPA § 1692e (9), when it used or
11 distributed Exhibit B to falsely represent a document to be authorized,
12 issued, or approved by court;

13 f. Defendant violated the FDCPA §1692e (11), when it failed to
14 disclose that debt collector is attempting to collect a debt and that any
15 information obtained will be used for that purpose;

16 g. Defendant violated the FDCPA §1692f, through its agents and
17 employees, by using unfair and deceptive means to collect a debt;

18 h. Defendant violated the FDCPA §1692f (1), for adding fees,
19 charges and expenses not expressly authorized by an agreement with
20 Plaintiff;

21 i. Defendant violated the FDCPA §1692g and §1692g(a), when it
22 failed to send a written notice containing appropriate disclosures about
23 the alleged debt, including the name of the creditor, the amount of
24 debt, etc.; and

25 j. Defendant violated the FDCPA when it was otherwise
 deceptive and failed to comply with the provisions of the FDCPA.

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V. JURY DEMAND

43. Plaintiff hereby demands a trial by jury on all issues so triable.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, GABRIELLE HARRIS, by and through her attorneys, respectfully pray for judgment as follows:

- a. All actual compensatory damages suffered;
- b. Statutory damages of \$1,000.00 for each violation;
- c. Plaintiff's attorneys' fees and costs; and
- d. Any other relief deemed appropriate by this Honorable Court.

RESPECTFULLY SUBMITTED,

DATED: April 14, 2010

KIMMEL & SILVERMAN, P.C..

By: /s/ Craig Thor Kimmel
Craig Thor Kimmel
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